

Application No. 10/773,859
Response Dated October 2, 2006
Reply to Office Action dated May 30, 2006

REMARKS

**Reconsideration And Allowance
Are Respectfully Requested.**

Claims 1-21 are currently pending. No claims have been canceled. No claims have been amended. No new matter has been added. No new claims have been added. Reconsideration is respectfully requested.

Despite Applicants' assertions to the contrary, the rejection presented in the original Office Action has once again been maintained. In particular, claims 1-21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,248,342 to Trogolo et al. (Trogolo) in view of U.S. Patent Nos. 5,931,354, 5,962,564 and 6,075,078 to Braud et al. (Braud patents).

Applicants have maintained these claims without amendment and respectfully request the Examiner reconsider the prior position regarding patentability based upon the following discussion. In addition, and with regard to the rejection of dependent claims 4-10 and 14-20, the outstanding Office Action fails to provide a substantive explanation for the rationale behind the outstanding rejection. The Office Action also fails to cite any prior art supporting for the rejection. Applicants have requested the citation of prior art supporting the rejection of these claims, but yet no prior art has been provided. This request relies upon MPEP 2144.03 which requires an Examiner who has taken official notice that technology is well known in the art without the citation of documentary evidence to support the Examiner's conclusion to cite prior art supporting his or her proposition if an applicant traverses the rejection. The Examiner cites no prior art supporting the rejection of these dependent claims and provides no explanation for how these dependent claims would in fact

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be obvious based upon prior art. As such, it is impossible for Applicants to respond to the rejection in a meaningful manner.

Returning now to independent claims 1 and 11, they respectively define a flooring plank and a method for forming a flooring plank in a manner which inhibits the growth of mold, mildew, bacteria or unwanted biological agents adjacent an underside of the flooring plank. This is achieved by providing a backing layer formed so as to include an antimicrobial agent acting upon unwanted biological organisms. The backing layer is secured to an underside of a core layer having a decorative surface along its upper surface.

In contrast to the claims, neither Trogolo nor the Braud patents consider the nuances of constructing a flooring plank as claimed in accordance with the present invention. While the Office Action does point out that Trogolo teaches it is known in the art to manufacture high pressure laminates with antimicrobial agents and then secure it onto a substrate, Trogolo does not teach how the antimicrobial, high pressure laminate should be incorporated into the final product so as to take advantage of the antimicrobial agents secured therein in a manner specifically suited for the use of the final product. Similarly, the Office Action points out the Braud patents teach it is known in the art to use an antimicrobial agent in an adhesive, wherein the adhesive may be utilized in flooring products. However, the Braud patents do not disclose or suggest the use of the adhesive in the manufacture of flooring planks constructed from high pressure decorative laminate as claimed in accordance with the present invention.

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Applicants have not merely claimed the use of antimicrobial agents in high pressure laminate flooring planks, but have defined a highly specific arrangement of components in an attempt to provide a highly effective flooring plank. As previously discussed in the prior Amendment, the use of antimicrobial agents within the backing layer of the claimed flooring plank substantially reduces the potential development of undesirable biological agents adjacent the unexposed and inaccessible, underside of the flooring plank. As those skilled in the art will also certainly appreciate, it is relatively easy to maintain the upper surface of the flooring plank clean and substantially free of undesirable biological agents. However, it is virtually impossible to ensure the underside of the flooring plank is maintained free of unwanted biological agents. The application of the antimicrobial agent within the backing layer of the flooring plank as claimed in accordance with the present invention provides a large surface for combating the accumulation of undesirable biological agents beneath the flooring planks.

Neither Trogolo nor the Braud patents appreciate this fact. This is the basis of the Office Action's failure to provide a *prima facie* case of obviousness. The U.S. Patent and Trademark Office has determined that a *prima facie* case of obviousness is established by meeting three basic criteria. First, the Examiner must show some suggestion or motivation to modify the reference or to combine reference teachings. Second, the Examiner must show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art. Finally, the prior art reference (or references when combined) must teach or suggest all the claimed limitations. Support for the proposed modification and a reasonable expectation of success must be found in the prior art.

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With this in mind, the outstanding rejection fails to present a *prima facie* case of obviousness. In particular, the Office Action fails to provide some suggestion or motivation to modify the references as contemplated. While Trogolo does teach the construction of antimicrobial high pressure laminates and the Braud patents do teach the utilization of an adhesive having antimicrobial agents, the references most certainly do not disclose the construction of a flooring plank having a backing layer with an antimicrobial agent as claimed. The Office Action also fails to show a reasonable expectation of success in modifying the primary reference based upon the teachings of the prior art. In particular, the Office Action shows no reason why one would utilize the adhesive of Braud with the antimicrobial high pressure laminate disclosed by Trogolo to create a flooring plank as claimed. In particular, if Trogolo already discloses the construction of an antimicrobial high pressure laminate, why would Trogolo employ an antimicrobial adhesive in conjunction with the high pressure laminate that already offers antimicrobial properties?

Finally, support for the proposed modification must be found in the prior art. As discussed above, neither Trogolo nor Braud disclose a flooring plank as claimed. Still further, neither Trogolo nor the Braud patents suggest a flooring plank as claimed. As such, Applicants do not understand how either Trogolo or Braud suggest the utilization of an antimicrobial agent impregnated backing layer as claimed.

With the foregoing in mind, the Office Action fails to present a *prima facie* case of obviousness and, Applicants, therefore respectfully request the outstanding rejection be withdrawn.

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Further, and with regard to new claim 21, the limitations of this claim have also been substantially overlooked. In addition to defining a flooring plank having a decorative upper surface and a core layer, claim 21 defines edges adapted for engagement with adjacent flooring planks and a backing layer having antimicrobial agents incorporated therein. Claim 21 further defines that the paper is impregnated on one side with the first resin and impregnated on an opposite side with a second resin different from the first resin and including an antimicrobial agent. While Trogolo discloses the use of different resins as noted in the Office Action, Trogolo does not disclose the claimed paper and certainly does not disclose it used in a backing layer as claimed. As such, Applicants respectfully request the rejection relating to claim 21 also be withdrawn.

As to the dependent claims, they are believed to overcome the prior art of record for the reasons presented above. Further and with regard to claims 4-10 and 14-20, these relate to specific components of the claimed invention and the Examiner has yet to provide any support why these features would in fact be obvious. In particular, claims 4 and 14 relate to the treatment of the edges of the core layer with a sealant containing an antimicrobial agent. Where in any reference of record is the treatment of the edges of a flooring plank with an antimicrobial agent as claimed disclosed?

As to claims 5 and 15, these specify that the antimicrobial agent applied to the edges is a chlorophenol. Once again, where in the prior art is it disclosed that a chlorophenol may be applied to the edges of a flooring plank as claimed?

As to claims 6 and 16, it is further defined that the antimicrobial agent is a water based iodinated sulfane. No prior art has been suggested for supporting the use of an iodinated sulfane in the flooring plank as claimed.

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As to claim 7 and 17, Applicants define that the backing layer is composed of a first sheet and a second sheet of resin impregnated kraft paper consolidated under heat and pressure to form a laminate. Once again, where in the prior art is it suggested the backing layer of the claimed flooring plank would obviously be constructed in this manner?

As to claims 8 and 18, Applicants have defined that the first sheet is a phenolic resin impregnated Kraft paper and the second sheet is impregnated with both melamine and phenolic resin, the second sheet including a first surface coated with the phenolic resin and a second surface coated with the melamine such that the second surface is exposed when the backing layer is secured to the core layer. Once again, where in the prior art is such claimed construction taught?

Claims 9 and 19 further go on to specify that the antimicrobial agent is incorporated in the melamine applied to the second surface of the second sheet of the backing layer. Once again, where in the prior art is such a claimed feature disclosed or suggested?

Finally, claims 10 and 20 define that the antimicrobial agent is a water based iodinated sulfane. Once again, where in the prior art is such a claimed construction disclosed?

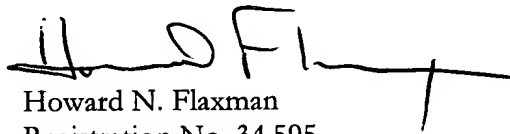
Since claims 4-10 and 14-20 are not disclosed in the prior art of record it is inconceivable that they can be deemed obvious.

With the foregoing in mind, it should be very clear that the outstanding Office Action fails to present a *prima facie* case of obviousness. As such, Applicants respectfully request the outstanding rejections be withdrawn and the case be passed on for issuance.

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It is believed that this case is in condition for allowance and reconsideration thereof and early issuance is respectfully requested. If it is felt that an interview would expedite prosecution of this application, please do not hesitate to contact applicants' representative at the below number.

Respectfully submitted,



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